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EXAMINER

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3623

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/684,861
Filing Date: October 06, 2000
Appellant(s): BILIBIN ET AL.

Bilbin et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/30/2006 appealing from the Office action mailed 12/20/2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Thiel (U.S. 5,699,258)

FedEx (www.fedex.com).

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13, 15-17, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thiel (U.S. 5,699,258) in view of FedEx (www.fedex.com).

As per claim 1, Thiel discloses a shipping management computer system, said computer system programmed to:

in response to each respective request by each particular user of a plurality of users to ship a particular respective parcel, wherein each respective request includes a first address and a second address, determine a respective potential cross-comparison delivery schedule, said respective cross-comparison delivery schedule comprising a plurality of respective service-specific carrier-specific delivery schedules to ship the particular respective parcel from the first address to the second address, wherein each respective service-specific carrier-specific delivery schedule corresponds to a respective particular delivery service of a plurality of delivery services offered by a particular carrier of a plurality of carriers, wherein the respective potential cross comparison delivery schedule comprises services by each respective particular carrier of the plurality of carriers that would deliver the particular respective parcel, and wherein the shipping management computer system is accessed by each respective particular user via a

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communications network using a respective user client computer device (See abstract, column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, wherein a request of a user to ship a parcel from a first address to a second address is received and a comparison is generated concerning multiple carriers using carrier specific data and the services offered. See figure 1, column 2, lines 35-61, column 3, lines 9-26, column 7, lines 25-35, and column 10, lines 15-35, all of which discuss the architecture of the system including a communications network and a client device).

However, while Thiel discloses the date of shipping and planning delivery based on the shipment type, such as express mail, Thiel does not expressly disclose that the delivery schedule comprises a respective delivery date and a respective delivery time for each respective particular delivery.

FedEx discloses a carrier offering shipment types, wherein shipment types comprise a respective delivery date and a respective delivery time (See pages 2-3, page 5, section 1, and page 6, which disclose the different service types offered along with a delivery date and time associated with the delivery).

Thiel discloses that the date of the shipment is input into the system and also discloses shipment types for carriers, these shipment types including express mail, priority, etc. FedEx discloses a respective delivery date and a respective delivery time for each service type for the carrier, such as if the current date was 12/12/05, the shipment type "priority overnight" would give the delivery date of 12/13/05 with the delivery time of 10:30. Therefore, since Thiel discloses specifying a date of shipment in the system and types of services that include guaranteed times to delivery, it would have been obvious to one of ordinary skill in the art at the

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time of the invention to include displaying the delivery date and delivery time of the carrier, such as the dates and times set forth in FedEx, in order to increase user satisfaction with shipping items by showing a display containing more comprehensive information about the service types offered by the competing carriers, thus aiding the user in the selection of a proper carrier. See column 10, lines 55-67, and column 11, lines 45-55, of Thiel.

As per claim 2, Thiel teaches a shipping management computer system, said computer system further programmed to:

calculate a respective shipping rate for each said respective particular delivery service to ship the particular respective parcel according to the respective service-specific carrier-specific delivery schedule (See column 4, line 60-column 5, line 15, column 6, lines 49-55, column 8, line 45-66, column 10, line 65-column 11, line 25 and 46-54, wherein a shipping rate is calculated for each carrier).

As per claim 3, Thiel teaches the shipping management computer system further programmed to: in response to a user request by a respective particular user for a shipping rate and delivery schedule comparison, generate a display of an online, interactive prompt to a display monitor configured with the respective user client computer device of the respective particular user, said online interactive prompt comprising a simultaneous cross-comparison of said respective shipping rates, the display of each respective shipping rate corresponding to a display of the respective service-specific carrier-specific delivery schedule for the particular delivery service to ship the particular respective parcel (See column 6, lines 7-11 and 50-55, column 7, lines 15-30, column 10, lines 45-64, column 11, lines 45-55, wherein a display shows a cross comparison of multiple carriers by plans, charges, and types. See figure 1, column 2,

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lines 35-61, column 3, lines 9-26, column 7, lines 25-35, and column 10, lines 15-35, all of which discuss the architecture of the system including a communications network and a client device connected to the network).

Claims 4, 5, and 6 recite equivalent limitations to claims 1, 2, and 3, respectively, and are therefore rejected using the same art and rationale as applied above.

Claims 7, 8, and 9 recite equivalent limitations to claims 1, 2, and 3, respectively, and are therefore rejected using the same art and rationale as applied above.

As per claim 10, Thiel teaches a shipping management computer system for:

allowing a user to request a package delivery service by providing shipping specifications (See column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, wherein a request is allowed to the system);

receiving said shipping specifications from said user (See column 3, lines 35-42, column 8, line 45-66, column 11, lines 1-25 and 46-54, wherein the specifications of the origin and destination are received, as well as a weight and type of mail);

identifying, from a plurality of carriers, a subset of carriers based on said shipping specifications, each of said subset of carriers being capable of satisfying said shipping specifications by providing said package delivery service to said user (See abstract, column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, wherein a subset of carriers are identified based on the provided specifications);

identifying a first carrier from said subset of carriers and a first set of shipment types provided by said first carrier (See abstract, column 4, line 60-column 5, line 15, column 8, line

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45-66, column 11, lines 1-25 and 46-54, wherein the different type of shipments are identified for the first carrier, such as express, air, priority mail or general delivery);

determining a first set of delivery schedules according to which said first carrier would be able to satisfy said shipping specifications, each one of said first set of delivery schedules corresponding to at least one of said first set of shipment types (See column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, which discloses the delivery schedules associated with the shipping specifications, such as next day delivery);

calculating a first set of service charges by said first carrier, each one of said first set of service charges calculated based upon at least one of said first set of shipment types provided by said first carrier (See column 4, line 60-column 5, line 15, column 6, lines 49-55, column 8, line 45-66, column 10, line 65-column 11, line 25 and 46-54, wherein charges are calculated);

identifying a second carrier from said subset of carriers and a second set of shipment types provided by said second carrier (See abstract, column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, wherein the different type of shipments are identified for a second carrier, such as express, air, priority mail or general delivery);

determining a second set of delivery schedules that said second carrier is capable of providing to said user, each one of said second set of delivery schedules corresponding to at least one of said second set of shipment types (See column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, which discloses the delivery schedules associated with the shipping specifications, such as next day delivery);

calculating a second set of service charges by said second carrier, each one of said second set of service charges calculated based upon at least one of said second set of shipment types

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provided by said second carrier (See column 4, line 60-column 5, line 15, column 6, lines 49-55, column 8, line 45-66, column 10, line 65-column 11, line 25 and 46-54, wherein charges are calculated); and

displaying to the user said first set of delivery schedules, said first set of service charges, and said first set of shipment types (See column 6, lines 7-11 and 50-55, column 7, lines 15-30, column 10, lines 45-64, column 11, lines 45-55, wherein the user displays plans, charges, and types of a first carrier);

simultaneously displaying to the user said second set of delivery schedules, said second set of service charges, and said second set of shipment types (See column 6, lines 7-11 and 50-55, column 7, lines 15-30, column 10, lines 45-64, column 11, lines 45-55, wherein the user displays plans, charges, and types of a second carrier).

However, while Thiel discloses the date of shipping and planning delivery based on the shipment type, such as express mail, Thiel does not expressly disclose a delivery date and time.

FedEx discloses a carrier offering shipment types, wherein shipment types comprise a respective delivery date and a respective delivery time (See pages 2-3, page 5, section 1, and page 6, which disclose the different service types offered along with a delivery date and time associated with the delivery).

Thiel discloses that the date of the shipment is input into the system and also discloses shipment types for carriers, these shipment types including express mail, priority, etc. FedEx discloses a respective delivery date and a respective delivery time for each service type for the carrier, such as if the current date was 12/12/05, the shipment type "priority overnight" would give the delivery date of 12/13/05 with the delivery time of 10:30. Therefore, since Thiel

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discloses specifying a date of shipment in the system and types of services that include guaranteed times to delivery, it would have been obvious to one of ordinary skill in the art at the time of the invention to include displaying the delivery date and delivery time of the carrier, such as the dates and times set forth in FedEx, in order to increase user satisfaction with shipping items by showing a display containing more comprehensive information about the service types offered by the competing carriers, thus aiding the user in the selection of a proper carrier. See column 10, lines 55-67, and column 11, lines 45-55, of Thiel.

As per claim 11, Thiel teaches a shipping management computer system wherein said shipping specifications comprise a package weight, a package size, an origin, and a destination (See column 8, line 45-66, column 10, lines 45-55, column 11, lines 1-25 and 35-50, wherein the specifications include, weight, origin, size, and destination)

As per claim 12, Thiel discloses wherein said shipping specifications further comprise a shipping date (See column 6, lines 23-33, column 7, line 44-column 8, line 5, and column 9, lines 1-10 wherein the date to be shipped is recorded for fee purposes).

As per claim 13, Thiel teaches wherein said first set of shipment types comprise ground shipment, next day air, and express shipment (See column 8, line 45-66, which discloses the shipment types).

Claims 15 and 16 recite equivalent limitations to claims 2 and 3, respectively, and are therefore rejected using the same art and rationale applied above.

As per claim 17, Thiel teaches wherein each respective service-specific carrier-specific delivery schedule corresponds to a schedule by which a particular delivery service offered by a particular carrier would deliver the particular respective parcel (See abstract, column 4, line 60-

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column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, wherein the comparison shows multi-carrier schedule data with respect to the parcel).

As per claim 19, Thiel discloses wherein said first set of delivery schedules comprises:

a delivery schedule according to which said first carrier would be able to satisfy said shipping specifications via a first shipment type (See abstract, column 4, line 60-column 5, line 15, column 8, line 45-66, column 10, line 56-column 11, line 1-25 and 46-54, which is the first carrier that is able to satisfy the shipping request of a first type); and

a delivery schedule according to which said first carrier would be able to satisfy said shipping specifications via a second shipment type, said second shipment type being different from said first shipment type (See abstract, column 4, line 60-column 5, line 15, column 8, line 45-66, column 10, line 56-column 11, line 1-25 and 46-54, which is the first carrier that is able to satisfy the shipping request of a second type).

As per claim 20, Thiel teaches wherein said second set of delivery schedules comprises:

a delivery schedule according to which said second carrier would be able to satisfy said shipping specifications via said first shipment type (See column 4, line 60-column 5, line 15, column 8, line 45-66, column 10, line 56-column 11, line 1-25 and 46-54, which shows a second carrier able to satisfy the specifications for the first type).

As per claim 21, Thiel teaches wherein said second set of delivery schedules comprises:

a delivery schedule according to which said second carrier would be able to satisfy said shipping specifications via said second shipment type (See column 4, line 60-column 5, line 15, column 8, line 45-66, column 10, line 56-column 11, line 1-25 and 46-54, which shows a second carrier able to satisfy the specifications for the second type).

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As per claims 22 and 23, Thiel discloses the date of shipping and planning delivery based on the shipment type, such as express mail (See column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54, wherein a request of a user to ship a parcel from a first address to a second address is received and a comparison is generated concerning multiple carriers using carrier specific data and the services offered). However, Thiel does not expressly disclose and FedEx discloses a respective delivery date and respective delivery time, wherein the respective delivery date and respective delivery time correspond, respectively, to a date and time (See pages 2-3, page 5, section 1, and page 6, which disclose the different service types offered along with a delivery date and time associated with the delivery).

Thiel discloses that the date of the shipment is input into the system and also discloses shipment types for carriers, these shipment types including express mail, priority, etc. FedEx discloses a respective delivery date and a respective delivery time for each service type for the carrier, such as if the current date was 12/12/05, the shipment type "priority overnight" would give the delivery date of 12/13/05 with the delivery time of 10:30. Therefore, since Thiel discloses specifying a date of shipment in the system and types of services that include guaranteed times to delivery, it would have been obvious to one of ordinary skill in the art at the time of the invention to include displaying the delivery date and delivery time of the carrier, such as the dates and times set forth in FedEx, in order to increase user satisfaction with shipping items by showing a display containing more comprehensive information about the service types offered by the competing carriers, thus aiding the user in the selection of a proper carrier. See column 10, lines 55-67, and column 11, lines 45-55, of Thiel.

(10) Response to Argument

In the Appeal Brief, Appellant provides the following arguments:

- 1) There is no teaching or suggestion found in the prior art to combine the teachings of Thiel and Fedex
- 2) Thiel does not teach or suggest a cross comparison delivery schedule and the determination or display of a schedule with delivery dates and times, but rather the table of Thiel is a stored table with no dates or times listed;
- 3) Thiel does not teach or suggest a communications network using a client computer device, but rather downloading data tables from transmission means;
- 4) Fedex does not teach or suggest identifying times for deliveries or determining a schedule or a cross-comparison delivery schedule for multiple carriers;
- 5) Neither Thiel nor Fedex teaches or suggests calculating a shipping cost/rate for delivery of a particular parcel by each particular delivery service of each particular carrier of a plurality of carriers (claims 2, 5, 8, and 15);
- 6) Thiel does not teach or suggest generating a display of an online interactive prompt comprising simultaneous cross comparison of shipping rates (claims 3, 6, 9, and 16);
- 7) Neither Thiel nor FedEx teach or suggest delivery schedules for first and second shipment types for a first and a second carrier (claims 19-21); and
- 8) Neither Thiel nor FedEx discloses the "delivery schedule" as described in the specification.

In response to argument 1) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

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teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Thiel discloses inputting a date of shipment and also discloses showing shipment types for carriers, these shipment types including express mail, priority, etc. FedEx discloses a listing showing what the shipment types of express mail, priority, etc. mean and also teaches respective delivery date and a respective delivery time for each service type for the carrier, such as if the current date was 12/12/05, the shipment type "priority overnight" would give the delivery date of 12/13/05 with the delivery time of 10:30. Therefore, since Thiel discloses specifying a date of shipment in the system and types of services that include guaranteed times to delivery, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the delivery date and time information set forth in FedEx in order to increase user satisfaction with shipping items by showing a display containing more comprehensive information about the service types offered by the competing carriers, thus aiding the user in the selection of a proper carrier. See column 10, lines 55-67, and column 11, lines 45-55, of Thiel. Therefore, there is motivation to combine the references. See also column 5, lines 9-15, which discloses Federal Express as a carrier.

In response to argument 2), Examiner respectfully disagrees. Thiel specifically discloses a cross comparison delivery schedule in the comparison table that lists different carriers and compares items associated with the carriers, such as express delivery and prices. See column 11, lines 1-25. As discussed in column 10, lines 55-67, this table is to aid the user in selecting a

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competing vendor by showing different carriers in comparable form. The term schedule, in the broadest reason interpretation, means a plan of procedure for a proposed objective, with reference to the sequence of and time allotted for each item or operation necessary to its completion or a series of things to be done at or during a particular time or period. Thiel discloses that entered data concerning the shipments (such as the current date, ship-to location, weight, etc.) causes the system to display a comparison of different carrier's schedules. These are schedules, based on the broadest reasonable interpretation of the term schedule, since the table shows a listing of things (i.e. services) that are to be done at a particular time (i.e the current date plus any specific add-ons, like express delivery). Thiel specifically only displays those carriers that are capable of providing the timing wanted by the user (i.e. the system searches for carriers based on the current date and required services (such as express delivery) that are capable of providing the services). Therefore, this comparison of carriers is automatically determined based on the information input (certain fees go into effect based on the current date, certain carriers are excluded based on the required services, etc.) and thus is not merely stored in the system. See column 4, line 60-column 5, line 15, column 8, line 45-66, column 11, lines 1-25 and 46-54. Therefore, Thiel does disclose the determination of a schedule.

Examiner notes that she relied on FedEx to show that the comparison includes a respective delivery date and time. See discussion below with regards to FedEx.

In response to argument 3), Examiner respectfully disagrees. See column 2, lines 35-61, column 3, lines 9-26, column 7, lines 25-35, and column 10, lines 15-35, all of which discuss the architecture of the system, which includes downloading tables, a communications network, and a

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client device (i.e. the franking machine). Therefore, the device of Thiel downloads information such as via a communications network.

In response to argument 4), Examiner respectfully disagrees. Examiner has relied upon FedEx to disclose a carrier offering shipment types, wherein shipment types comprise a respective delivery date and a respective delivery time (See pages 2-3, page 5, section 1, and page 6, which disclose the different service types offered along with a delivery date and time associated with the delivery). Examiner did not rely on FedEx to teach determining a schedule or a cross-comparison delivery schedule for multiple carriers. Specifically, the system of Thiel discloses a cross comparison table of carriers that provide shipping services that include express and priority mail. Fedex is a delivery services provider that offers express and priority mail services, as shown in pages 2-3 and 5-6. Therefore, examine included Fedex to show the specific dates associated with the services compared in Thiel. See column 8, lines 55-67, and column 11, lines 1-25 and the table, of Thiel, which disclose types of services like express delivery and priority mail. The system of Thiel also uses as input the current date. Therefore, if Fedex was a carrier compared in Thiel, page 2 of Fedex shows same day services, priority services, etc. So if priority overnight service was selected, and the current date is 11/27/06, the shipment would be delivered by "10:30 am the next business day to thousands of US cities, by noon to many other areas", etc. This timing would be known, since the delivery region was input into the system of Thiel. Therefore, Fedex describes the schedule of the delivery date and time, since if the current date is 11/27/06 and priority overnight is chosen, the package would arrive on 11/28/06 by 10:30 to a US city.

In response to argument 5), Examiner respectfully disagrees. Examiner first notes that Thiel alone was relied upon to disclose this limitation. Thiel discloses calculating a respective shipping rate for each said respective particular delivery service to ship the particular respective parcel according to the respective service-specific carrier-specific delivery schedule in column 4, line 60-column 5, line 15, column 6, lines 49-55, column 8, line 45-66, column 10, line 65-column 11, line 25 and 46-54. Thiel specifically receives as input the current date and the desired services of the user, as well as the weight and delivery destination of the parcel, and the shows the fees associated with each carrier, as calculated by the system.

In response to argument 6), Examiner respectfully disagrees. See column 6, lines 7-11 and 50-55, column 7, lines 15-30, column 10, lines 45-64, column 11, lines 45-55, wherein a display shows a cross comparison of multiple carriers by plans, charges, and types. The user is able to input data into the device (such as requirements, package weight, etc) to arrive at the display. Thus the system is interactive. See figure 1, column 2, lines 35-61, column 3, lines 9-26, column 7, lines 25-35, and column 10, lines 15-35, all of which discuss the architecture of the system including a communications network and a client device connected to the network

In response to argument 7), Examiner respectfully disagrees. Examiner first notes that Thiel alone was relied upon to disclose this limitation. Second, Thiel discloses comparing multiple carriers across multiple services by the system so that a user can make a selection. See the abstract, column 8, lines 45-66, column 10, line 56-column 11, line 25 and lines 46-54, where each carrier offers multiple services (express delivery, bulk discounts, return receipt, etc.). The system searches the carriers that offer the desired services and displays the carriers that are able to meet the requirements of the user. Since Thiel discloses that entered data concerning the

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shipments (such as the current date, ship-to location, weight, etc.) causes the system to display a comparison of different carrier's ability to fulfill the service, these are schedules, based on the broadest reasonable interpretation of the term schedule, since the table shows a listing of things (i.e. services) that are to be done at a particular time (i.e. the current date plus any specific additions, like express delivery).

In response to argument 8) that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the specific definition and features of "delivery schedule" set forth in the specification) are not all recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

lwd

bvd

November 26, 2006

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